

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:08-cv-384-RJC**

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|------------------------------------|---|
| INDUSTRIAL MAINTENANCE |) |
| SERVICES, |) |
| |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| UPS SUPPLY CHAIN SOLUTIONS, |) |
| INC., a/k/a UNITED |) |
| |) |
| Defendant. |) |

THIS MATTER is before the Court on the defendant’s Motion to Dismiss (Doc. No. 2 & 3), the plaintiff’s Response (Doc. No. 6), the magistrate judge’s Memorandum and Recommendation (“M&R”) (Doc. No. 10), which recommended that the defendant’s motion to dismiss be granted and that the Court also grant the plaintiff leave to amend its complaint to state a claim to recover its actual damages for breach of contract. The parties were advised that objections were to be filed in writing within ten (10) days after service of the magistrate judge’s decision. (Doc. No. 10: M & R at 7). The time for filing objections has since passed and no objections have been filed by either party in this matter. For the reasons stated below, the Court GRANTS the defendant’s Motion to Dismiss.

I. STANDARD OF REVIEW

The Federal Magistrate Act provides that a district court “shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); Camby v. Davis, 718 F.2d 198, 198 (4th Cir. 1983). “By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in


order to accept the recommendation.”” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

II. CONCLUSION

Accordingly, after a careful review of the record in this case, the Court finds that the magistrate judge’s findings of fact are supported by the record and his conclusions of law are consistent with and supported by current case law. Thus, the Court hereby accepts the M&R of Magistrate Judge Horn and adopts it as the final decision of this Court for all purposes relating to this case.

IT IS, THEREFORE, ORDERED that the defendant’s Motion to Dismiss is **GRANTED** and the Court will **GRANT** the plaintiff leave to amend its complaint.

Signed: November 3, 2008


Robert J. Conrad, Jr.
Chief United States District Judge

